

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TONY FOUNTAIN, #152157,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:06-CV-548-MHT
)	[WO]
)	
DR. PEASANT, et al.,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

On July 19, 2006, the plaintiff filed a motion to release the State of Alabama as a defendant in this cause of action. *Court Doc. No. 10*. The court therefore construes this motion as a motion to dismiss.

The law is well settled that the State of Alabama is immune from suit. *Papasan v. Allain*, 478 U.S. 265 (1986). Moreover, “a State is not a ‘person’ within the meaning of § 1983 . . .” *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65, 109 S.Ct. 2304, 2309 (1989). Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. The plaintiff’s motion to dismiss be GRANTED.
2. The plaintiff’s claims against the State of Alabama be dismissed with prejudice.
3. The State of Alabama be dismissed as a defendant in this cause of action.
4. The remaining claims for relief be referred back to the undersigned for further appropriate proceedings.

It is further

ORDERED that on or before August 3, 2006 the parties may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all decisions of the former Fifth Circuit Court of Appeals handed down prior to the close of business on September 30, 1981.

DONE, this 21st day of July, 2006.

/s/ Susan Russ Walker
SUSAN RUSS WALKER
UNITED STATES MAGISTRATE JUDGE